STATE OF MISSOURI CIRCUIT COURT
TWENTY-FIRST JUDICIAL CIRCUIT
COUNTY OF ST. LOUIS

Bennett, Melissa V., and	)	
	)	
Frazier, Rebecca "KB" L. Frazier,	)	
	)	
Plaintiffs,	)	Case No. 15SL-CC03628
	)	
vs.	)	
	)	Div. 19
St. Louis County, Missouri;	)	
	)	
Missouri Attorney General Chris Koster;	)	Hon. Gloria C. Reno
	)	
and	)	
	)	
Peter J. Krane, St. Louis County Counselor,	)	
	)	
Defendants.	)	

ORDER AND JUDGMENT

Procedural Background

On October 21, 2015, Plaintiffs filed a four count Complaint alleging that St. Louis County Ordinance §701.110, SLCRO 4866 (the "Ordinance") was unconstitutionally vague (Count I) and unconstitutionally overbroad (Count II). Plaintiffs also sought a declaratory judgment and a permanent injunction preventing Defendant St. Louis County and Defendant County Counselor Peter J. Krane ("Defendants") from enforcing the Ordinance (Count III), as well as a preliminary injunction preventing the enforcement of the Ordinance (Count IV). Also on October 21, 2015, Plaintiffs separately filed a Motion for Temporary Restraining Order.

Defendants filed and argued their motion to dismiss on December 16, 2015. On March 15, 2016 this court entered an order denying Plaintiffs' request for a temporary restraining order and preliminary injunction, as Plaintiffs did not plead any specific facts of any immediate or

irreparable injury or harm, noting that no charges were pending against Plaintiffs for any St. Louis County ordinance violations. This Court also denied Defendants' motion to dismiss, concluding that "Plaintiffs' declaratory judgment action revolves solely around a legal determination . . . and that [Plaintiffs] have satisfied the elements of a pre-enforcement [facial] challenge to the Ordinance."

Plaintiffs filed their Motion for Judgment on the Pleadings, with supporting memorandum, on March 31, 2016. Thereafter, Defendants filed their response in opposition on June 13, 2016. Plaintiffs filed their reply on July 1, 2016, and Defendants filed their sur-reply on July 22, 2016. On September 1, 2016 the matter was argued before this Court. Both parties were afforded the opportunity to provide proposed orders and judgments on or before October 17, 2016. Both parties filed their proposed orders and judgments on October 17, 2016.

The Ordinance

The Ordinance, §701.110, SLCRO 4866, entitled "Interfering with an Officer, Unlawful," provides:

> It is unlawful for any person to interfere in any manner with a police officer or other employee of the County in the performance of his official duties or to obstruct him in any manner whatsoever while performing any duty.

Legal Standard

Plaintiffs allege the Ordinance is void and unenforceable because it is: (1) unconstitutionally vague in violation of the Fourteenth Amendment of the U.S. Constitution and Article I, §10 of the Missouri Constitution; and (2) unconstitutionally overbroad, in violation of the First Amendment of the U.S. Constitution and Article I, §8 of the Missouri Constitution.

Plaintiffs' Motion for Judgment on the Pleadings is a 'pre-enforcement facial' challenge to the Ordinance, and not an 'as applied' challenge. Plaintiffs' Petition, p.2; Order of Court, 3/15/16, p.5. Thus, no facts are at issue, only legal issues regarding the constitutionality of the Ordinance. Judgment on the pleadings is only appropriate where the question before the court is *strictly* one of law. *Eaton v. Mallinckrodt, Inc.*, 224 S.W.3d 596, 599-600 (Mo. 2007); Mo.S.Ct.R. 55.27(b)(emphasis added). "[A] motion for judgment on the pleadings should be sustained if, from the face of the pleadings, the moving party is entitled to judgment as a matter of law." *Madison Block Pharmacy, Inc. v. U.S. Fidelity & Guaranty Co.*, 620 S.W.2d 343, 345 (Mo. banc 1981). Because "[t]he interpretation of an ordinance is a question of law," *State ex rel. Sunshine Enters. of Mo., Inc. v. Bd. of Adjustment of the City of St. Ann*, 64 S.W.3d 310, 312 (Mo. banc 2002) and because this Court has already determined that this "action revolves solely around a *legal* determination," *see* Order, slip op. at 5, no factual development is necessary.

A court must strike down an ordinance as unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment when it fails to "define the . . . offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

As explained by the U.S. Supreme Court, under the First Amendment, a law "that is substantially overbroad may be invalidated on its face." *New York v. Ferber*, 458 U.S. 747, 769 (1982). A statute is not facially invalid "merely because it is possible to conceive of a single impermissible application . . . ." *Id.* at 630 (Brennan, J., dissenting). Instead, "[i]n a facial challenge to the overbreadth and vagueness of a law, a court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct." *Hoffman*

Estates v. The Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 (1982); *Kolender*, 461 U.S. at 359. Criminal statutes must be scrutinized with particular care. *See, e.g., Winters*, 333 U.S. at 515 (1948). Criminal statutes that make unlawful a *substantial amount* of constitutionally protected conduct may be held facially invalid even if they also have legitimate application. *See, e.g., Kolender*, 461 U.S. at 359 (emphasis added).

This Court has the jurisdiction and the power to declare the "rights, status, and other legal relations" as plead by the parties. §527.010 R.S.Mo.; and Rule 87.01, et seq., Mo.S.Ct.R. "The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree." §527.010 R.S.Mo. A court may grant a declaratory judgment if presented with: (1) a justiciable controversy; (2) legally protectable interests; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law. *Schaefer v. Koster,* 342 S.W.3d 299, 300 (Mo. banc 2011)(footnote omitted). A declaratory judgment "is not a general panacea for all real and imaginary legal ills, nor is it a substitute for all existing remedies" and it "should be used with caution." *Blackburn v. Habitat Dev. Co.,* 57 S.W.3d 378, 389 (Mo.App.S.D. 2001) (quotation omitted).

"An injunction is an extraordinary and harsh remedy and should not be employed where there is an adequate remedy at law. *Harris v. Union Electric Co.,* 766 S.W.2d 80, 86 (Mo. banc 1989). Even though a claim for injunctive relief is founded on violations of constitutional rights, there remains the necessity of showing irreparable injury." *Farm Bureau Town & Country Ins. Co. of Missouri v. Angoff*, 909 S.W.2d 348, 354 (Mo. banc 1995)(*citing Allee v. Medrano,* 416 U.S. 802, 815 (1974)).

Discussion

I. The Ordinance is not unconstitutionally vague – the Ordinance does not violate the Due Process Clause of the Fourteenth Amendment and does not violate Article I, §10 of the Missouri Constitution.

The statute at issue and ruled constitutional by the United States Supreme Court in *Cameron v. Johnson*, 390 U.S. 611 (1968) is strikingly similar to the Ordinance. In *Cameron*, Plaintiffs were protesting at a courthouse, encouraging African-Americans to register to vote. *Id.* at 615. Plaintiffs were also protesting against racial discrimination in voter registration. *Id.* Plaintiffs were arrested for violating the following Mississippi law:

> It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to *obstruct or unreasonably interfere with free ingress or egress to and from any public premises*, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi, or any county or municipal government located therein, or *with the transaction of public business or administration of justice* therein or thereon conducted or so as to *obstruct or unreasonably interfere with free use of public streets*, sidewalks, or other public ways adjacent or contiguous thereto.

Id. at 612 (*citing* Miss. Code Ann. §2318.5 (Supp. 1966))(emphasis added).

In *Cameron*, as in the present case, Plaintiffs argue the statute was vague and overbroad, and that the statute forbids picketing in terms 'so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application . . . ." *Id.* at 615-16 (citations omitted). The United States Supreme Court ruled that the statute was in no way vague:

> The terms 'obstruct' and 'unreasonably interfere' plainly require no 'guess(ing) at (their) meaning.' [Plaintiffs] focus on the word 'unreasonably.' It is a widely used and

> well understood word and clearly so when juxtaposed with 'obstruct' and 'interfere.' We conclude that the statute clearly and precisely delineates its reach in *words of common understanding*. It is 'a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be proscribed.'

Id. (*citing Edwards v. South Carolina*, 372 U.S. 229 (1963)(emphasis added). Noteworthy is the fact that the Plaintiffs in *Cameron* argued the term '*unreasonably*' interfere made the statute even more vague and indefinite, but the Supreme Court disagreed. *Id.* at 616. In analyzing the Ordinance in the present case, it is necessary to apply the common understanding of words. *Id.* Interfere and obstruct are commonly understood words.

Since the Supreme Court's ruling in 1968, the *Cameron* principle of applying the common understanding of words has been consistently upheld in other cases and jurisdictions. For example, in reviewing an ordinance strikingly similar to the Ordinance in the present case, the Sixth Circuit held constitutional another "interfering with an officer" ordinance. *Lawrence v. 48th Dist. Court*, 560 F.3d 475 (6th Cir. 2009). In *Lawrence*, the Plaintiff was in his home when his father assaulted his brother. The police responded to the home, and the assaulted brother was tended to by paramedics outside the home. *Id.* at 477. The father was arrested outside the home. Exacerbating an already dangerous situation, the Plaintiff would not obey the commands of the police officer to exit the home. *Id.* The Plaintiff was charged with Bloomfield Township Ord. No. 137, §16.01(a), titled "Interfering with Police Department," which provided:

> No person shall resist any police officer, any member of the police department or any person duly empowered with police authority while in the discharge or apparent discharge of his duty, or in any way *interfere with or hinder him* with the discharge of his duty.

Id. at 477.

The *Lawrence* court found the "Interfering with Police Department" ordinance constitutional, applying the *Cameron* principle of using the *common understanding of words.* The *Lawrence* court, as well as the United States Supreme Court in *Cameron v. Johnson*, 390 U.S. 611 (1968), held that the word "interfere" was not vague. *Id.* at 616.

The *Lawrence* court noted in its 2009 decision that the Plaintiff did not cite any established Supreme Court precedent to support his argument that the ordinance was vague. *Id.* at 483. The *Lawrence* Plaintiff, as do the current Plaintiffs, relied on *Landry v. Daley*, 280 F.Supp. 968, 972-73 (N.D.Ill. 1968). The court held in *Landry* that the words and phrases "resist," "obstruct," "interfere," and "in the discharge of his duties" rendered the ordinance void for vagueness. *Id.* However, *Landry* does not amount to "clearly established Federal law as determined by the Supreme Court of the United States." *Lawrence*, 560 F.3d at 477. In other words, the *Landry* decision is not from the Supreme Court and is not binding.

The *Lawrence* court reasoned, "[t]here is [United States] Supreme Court precedent that suggests that the statute, using the words "resist," "hinder" and "interfere," is not vague." *Id.* at 482. *Words of common understanding* are not vague. *Lawrence*, 560 F.3d at 4616 (*citing Cameron v. Johnson*, 390 U.S. 611 (1968)(holding that the words "obstruct" and "interfere" were not vague).

In *Weed v. Jenkins*, _ F.Supp.3d _, 4:15-cv-00140-RLW, 2016 WL 4420985 (2016 E.D.Mo.)(appeal filed 9/15/16), in both a facial and as applied challenge, the Plaintiff asked the court to declare unconstitutional the following portion of §43.170, R.S.Mo.:

> [A]ny person . . . who willfully . . . opposes a member of the patrol in the proper discharge of his duties shall be guilty of a misdemeanor.

In *Weed*, the Plaintiff was protesting the policies of President Barack Obama . *Id.* at 1-2. Plaintiff was protesting by placing signs on the interstate overpass. *Id.* Highway Patrol Corporal

Jenkins arrested Plaintiff after he failed to leave the overpass. *Id.* In an opinion rendered just two months ago, the Missouri statute was declared constitutional. *Id.* Although *Weed* was a constitutionally overbroad challenge, it is noteworthy due to the statute's similarity to the Ordinance in the present case. *Id.* "[T]he statute at issue is *clear* and provides notice that person commits a misdemeanor when he or she willfully *resists or opposes* a member of the patrol in the proper discharge of his duties." *Id.* at 6. In short, the "Plaintiff's conduct of willfully opposing the trooper's order to move, *not his speech*, brought on the violation." *Id.* (emphasis added).

In the present case, without the support of specific legal citations, Plaintiffs argue that the terms "interfering" and "obstructing" are not defined in the Ordinance, lack a 'technical' meaning, lack an established meaning in common law, and lack any contextual reference which provides 'no guidance' as to their intended meaning. Plaintiffs' Memorandum, p.3. Thus, Plaintiffs argue, the Ordinance is vague. *Id.* However, as instructed by the Supreme Court in *Cameron* and its progeny, *words of common understanding* do not need further explanation. When applying and interpreting the Ordinance, an officer or court would use the common understanding of what it means to 'obstruct' or 'interfere' with an officer in her official duties.

A closer review of the various case law Plaintiffs cite in support of their argument further illustrates their inability to show that the Ordinance is vague. For example, Plaintiffs cite a 1948 Supreme Court decision for the proposition that three factors *should* be considered when determining whether a law is unconstitutionally vague. Plaintiffs' Memorandum, p.3, *citing Winters v. New York*, 333 U.S. 507, 519 (1948). In fact, as outlined in footnote 23 of a 1971 Pennsylvania district court case cited by Plaintiffs, the *Winters* court actually identified three factors which it only *suggested* courts *might* consider in determining the definitiveness of statutory language. *Corp. of Haverford Coll. v. Reeher*, 329 F. Supp. 1196, 1208, fn23 (E.D. Pa.), *supplemented,* 333 F. Supp. 450 (E.D. Pa. 1971). The *Reeher* court stated in footnote 23:

> In one of its many opinions dealing with vagueness, the Supreme Court *suggested* several factors which courts *might* consider in determining how definite statutory language was: (1) Whether intent or purpose was an element of the statutory violation; (2) Whether the challenged clause has any technical or common law meaning; and (3) Whether any light as to the clause's meaning can be gained from the section as a whole or from the section in which it appears.

Id. (*citing Winters v. New York*, 333 U.S. 507, 519 (1948))(emphasis added).

Even when applying these three suggested factors, the Ordinance is not vague. (1) Intent or purpose does not necessarily need to be an element of the Ordinance. The lack of a *mens rea* or scienter requirement does not render a statute *per se* vague. *Vill. of Hoffman Estates v. Flipside*, 455 U.S. 489, 497 (1982)(upholding various laws prohibiting the sale of drug paraphernalia); *see, also*, *Staley v. Jones*, 239 F.3d 769, 791 (6th Cir. 2001); and *Lawrence*, 560 F.3d at 481-82. (2) Technical or common law meaning is not necessary when the words have common meaning. *Cameron and Lawrence, supra.* (3) The Ordinance read as a whole is clear and sheds light on the proscribed conduct – do not interfere in any manner with a police officer in the performance of her official duties or obstruct a police officer in any manner while she is performing any duty. No person of common intelligence would fail to understand the proscribed conduct of interfering or obstructing with a police officer in the performance of her duties. *Cameron v. Johnson*, 390 U.S. 611 (1968); *Lawrence v. 48th Dist. Court*, 560 F.3d 475 (6th Cir. 2009).

Furthermore, the ordinance in *Reeher* is clearly distinguishable from the Ordinance. It is understandable that a statute prohibiting 'disturbing, interfering with or preventing . . . *administration of classes*' at a college is vague. On the other hand, the proscribed conduct in the

Ordinance is clear – do not interfere with a police officer in the performance of her official duties. *Cameron v. Johnson*, 390 U.S. 611 (1968); *Lawrence v. 48th Dist. Court*, 560 F.3d 475 (6th Cir. 2009); *Weed v. Jenkins*, _ F.Supp.3d _ (E.D.Mo. 2016).

In the final portion of their argument for vagueness of the Ordinance, Plaintiffs assert, without any legal authority, that an ambiguity is created by the use of the disjunctive term 'or' in the Ordinance.[1] Even assuming, *arguendo*, that an ambiguity exists in the Ordinance, the venerable rule of lenity would allay any of Plaintiffs' concerns regarding vagueness. The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them. *United States v. Santos*, 553 U.S. 507, 514 (2008)(*citing, e.g., United States v. Gradwell,* 243 U.S. 476 (1917); *McBoyle v. United States,* 283 U.S. 25, 27 (1931); *United States v. Bass,* 404 U.S. 336, 347–349 (1971)). *See, also*, *State v. Liberty*, 370 S.W.3d 537, 541 (Mo. banc 2012)(applying rule of lenity to statute to reduce defendant's eight convictions for possession of child pornography to one conviction); *Kersting v. Replogle*, No. WD 78983, 2016 WL 3166226, at 6 (Mo. Ct. App. June 7, 2016)(applying rule of lenity in favor of sex offender who was not required to register because definition of word "child" did not trigger law).

II. The Ordinance Is Not Unconstitutionally Overbroad, Does Not Violate the First Amendment of the United States Constitution and Does Not Violate Article I, §10 of the Missouri Constitution

Plaintiffs next argue that the Ordinance is void as 'overbroad' in violation of the First Amendment. Plaintiffs' Memorandum, p.7.

The Supreme Court's opinion in *Cameron*, discussed *supra*, clearly illustrates the Ordinance does not prohibit free speech. The Plaintiffs in *Cameron* argued that the statute

[1] Plaintiffs only citation in support of a purported ambiguity consists of a sentencing case which does not address the vagueness or overbreadth of a law. Plaintiffs' Memorandum, p.6 (*citing U.S. v. Garcia-Medina*, 497 F.3d 875, 877 (8th Cir. 2007)).

inhibited their right to free speech and their right to protest via picketing. *Cameron*, 390 U.S. at 616-617. Plaintiffs' argument centers on the fact that the proscription of the statute embraces picketing employed as a vehicle for constitutionally protected protest. *Id.* at 617. As illustrated in *Cameron*, the right to free speech and the right to picket are not without limitations. The adage that a person does not have a First Amendment right to yell 'fire' in a crowded theater, is ignored by Plaintiffs.

When upholding the constitutionality of a statute proscribing certain picketing and protesting near a courthouse, the United States Supreme Court in *Cameron* pointedly explains the limits to protesting:

> "[Plaintiffs'] argument centers on the fact that the proscription of the statute embraces picketing employed as a vehicle for constitutionally protected protest. But '*picketing and parading (are) subject to regulation* <u>*even though intertwined with expression and association*</u>*' and [the 'antipicketing statute'] does not prohibit picketing so intertwined unless engaged in a manner which obstructs or unreasonably interferes with ingress or egress to or from the courthouse*. Prohibition of conduct which has this effect does not abridge constitutional liberty 'since such activity bears no necessary relationship to the freedom to distribute information or opinion.' The statute is therefore '*a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and the fact that* <u>*free speech is intermingled*</u> *with such conduct does not bring with it constitutional protection.*'"

Cameron v. Johnson, 390 U.S. 611, 617 (1968)(*citing Cox v. State of Louisiana*, 379 U.S. 559, 564; and *Schneider v. State*, 308 U.S. 147, 161)(emphasis added).

McDermott v. Royal, 613 F.3d 1192 (8th Cir. 2010) is also strikingly similar to the Ordinance at issue. In *McDermott,* the Eighth Circuit upheld an ordinance that made it unlawful to "'*resist or obstruct* a city officer making an arrest . . . or attempting to execute *any other duty* imposed on him by law.'" *Id.* (quoting Springfield, Missouri Ordinance Section 78-32(1))(emphasis added). The *McDermott* court addressed whether the Springfield ordinance could be invalidated as overbroad by considering "whether it reached a substantial amount of conduct protected by the First Amendment, even if it also had a legitimate application." *Id.* (*citing City of Houston v. Hill,* 482 U.S. 451, 458-59 (1987)). The *McDermott* court upheld the Springfield ordinance, finding the terms "obstruct" and "resist" covered only physical acts or fighting words and did not provide the officers with unfettered discretion to make arrests for mere words that annoyed them. *Id.* at 1194 (*citing, with approval, Lawrence v. 48th Dist.Court,* 560 F.3d 475, 482 (6th Cir. 2009)(finding an ordinance prohibiting a person from resisting a police officer while in the discharge of his duty or from interfering with or hindering him with the discharge of his duty was not unconstitutional either on its face or as applied because the ordinance suggested physical interference, not speech, and the officers were justified in entering the home without a warrant); and *Martin v. City of Oklahoma City,*_ F. Supp. 3d _ , 2016 WL 1529927, at 12 (W.D. Okla. Apr. 14, 2016)(finding ordinance prohibiting conduct that interferes with a lawful command of a police officer in the discharge of his or her duties by any means "does not cast a broad net over any speech directed toward a policeman, but requires conduct that negatively impacts law enforcement activities")).

In *Weed v. Jenkins,* _ F.Supp.3d __, 4:15-cv-00140-RLW, 2016 WL 4420985 (2016 E.D.Mo.)(appeal filed 9/15/16), discussed, *supra,* involves a constitutional challenge, by an arrested protester on a highway overpass, to the following portion of §43.170, R.S.Mo.:

> [A]ny person . . . who willfully . . . opposes a member of the patrol in the proper

discharge of his duties shall be guilty of a misdemeanor.

In an opinion rendered just two months ago, the Missouri statute was declared constitutional and not overbroad. *Id.* "[T]he statute at issue is *clear* and provides notice that person commits a misdemeanor when he or she willfully *resists or opposes* a member of the patrol in the proper discharge of his duties." *Id.* at 6.

In the present case, the Ordinance does not proscribe free speech. A person who interferes or obstructs a police officer is not disseminating information. Prohibition of interference and obstruction of a police officer does not abridge constitutional liberty, because such activity bears no necessary relationship to the freedom to protest. The Ordinance is therefore 'a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and the fact that free speech is intermingled with such conduct does not bring with it constitutional protection.' *Cameron v. Johnson*, 390 U.S. 611, 617 (1968)(*citing Cox v. State of Louisiana*, 379 U.S. 559, 564; and *Schneider v. State*, 308 U.S. 147, 161)(emphasis added).

In support that the Ordinance is overbroad, Plaintiffs also cite *Baxter v. Ellington*, 318 F.Supp. 1079 (E.D. Tenn. 1970). Plaintiffs' Memorandum, p.7 (*citing*). In *Baxter*, which is not analogous to the present case, the Tennessee legislature attempted to address the issue of rioting on college campuses by enacting the following ordinance:

> "Persons interfering with the normal activities of campus buildings or facilities guilty of trespass— Penalty.— Any person who enters the campus, buildings, or facilities of a junior college, state university, or public school and is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful, or efficient conduct of the activities of such campus or facility may be directed by the chief administrative officer, or employee designated by him to maintain order on such campus or facility, to leave such campus, buildings, or facilities. If such person fails to do so, he shall be guilty of trespass, and upon conviction shall be deemed guilty of, and punished as for, a misdemeanor as provided in § 39-105.'

Id. at 1086 (*citing* Tenn.Code Ann. §39-1215 (1969)). The *Baxter* court reasoned the language of this statute was overbroad in that it prohibited acts which interfered with the "normal, orderly, peaceful or efficient conduct of an educational facility." *Id.* at 1086. The Ordinance in the present case is clearly distinguishable from the *Baxter* statute, in that the Ordinance proscribes only conduct which interferes specifically with a police officer in the performance of her official duties, or proscribes only conduct which obstructs an officer in any manner while performing any duty. One is not left to guess as to what is allowed and what is disallowed. St. Louis County Ordinance 4866, §701.110. Furthermore, the Supreme Court of Tennessee declined to follow *Baxter* in *State v. Lyons*, 802 S.W.2d 590 (Tenn. 1990). In *Lyons*, the Defendant was arrested when he and another man allegedly persisted in preaching and distributing religious literature on the grounds of a high school after the superintendent requested he leave. *Id.* at 591. The statute at issue provided in pertinent part:

> (1) Any person who defies a *lawful order,* personally communicated to him by the owner or other authorized person, not to enter or remain upon the premises of another, including premises which are at the time open to the public, shall be guilty of a misdemeanor....
> (2) The owner of the premises, or his authorized agent, may, under this subsection, *lawfully order* another not to enter or remain upon the premises if such person is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful or efficient conduct of the activities of such premises. Failure to comply with such *lawful order* shall constitute a misdemeanor punishable as provided in subdivision (1) of this subsection.

Tenn.Code Ann. §39–3–1201(a)(1988)(emphasis added). In ruling the statute was not overbroad, the *Lyons* court reasoned:

> "[A] a statute like § 39–3–1201, *applicable in a wide variety of situations*, must necessarily use words of general meaning, because greater precision is both impractical and difficult . . . . It is the duty of this Court to adopt a construction which will sustain a statute and avoid constitutional conflict if its recitation permits such a construction."

State v. Lyons, 802 S.W.2d 590, 592 (Tenn. 1990)(*citing State v. Andersen,* 370 N.W.2d 653, 663 (Minn.App.1985); *Arnett v. Kennedy,* 416 U.S. 134, 94 S.Ct. 1633, 1647 (1974))(emphasis added). The Lyons court also reasoned that the statute was not vague:

> The vagueness doctrine does not invalidate every statute which a reviewing court believes could have been drafted with greater precision, especially in light of the inherent vagueness of many English words.

Lyons, 802 S.W.2d at 592 (citations omitted). In the present case, the Ordinance utilizes words of general meaning, words that are commonly understood, and words that cannot be made more precise. *Id.*

In support that the Ordinance is overbroad, Plaintiffs also cite *City of Houston, Tex. v. Hill*, 482 U.S. 451 (1987). In *City of Houston,* the Supreme Court considered the constitutionality of a Houston ordinance that contained language making it unlawful to "in any manner oppose, molest, abuse or *interrupt* any policeman in the execution of his duty." *Id.* (emphasis added).

The Court found that the ordinance was substantially overbroad, and thus unconstitutional, because it prohibited "verbal interruptions" of officers—speech that could not be criminalized—and was not limited to fighting words or even to obscene or opprobrious language. *City of Houston,* 482 U.S. at 455, 462–63 (1987). The Fifth, Sixth, and Eighth Circuits have since considered similar ordinances, but found them distinguishable from the Houston ordinance which used the term "interrupt." The Fifth Circuit affirmed the rejection of an overbreadth challenge to an ordinance making it unlawful to "obstruct, prevent or interfere with" an officer's lawful discharge of his duties in *Fair v. City of Galveston,* 915 F.Supp. 873, 879–80 (S.D.Tex.), *aff'd,* 100 F.3d 953 (5th Cir.1996); the Sixth Circuit found that an ordinance

prohibiting resisting, interfering, or hindering a police officer suggested physical interference, not speech, *see Lawrence v. 48th Dist. Court,* 560 F.3d 475, 482 (6th Cir.2009); *cf. Dorman v. Satti,* 862 F.2d 432, 436–37 (2d Cir.1988) (citing *City of Houston* for proposition that statute which used terms "interfere" and "harass" criminalized substantial amount of First Amendment protected speech). The Eighth Circuit has distinguished *City of Houston* in *McDermott v. Royal,* 613 F.3d 1192 (8th Cir. 2010), discussed *supra.* The Eighth Circuit in *McDermott* followed these other circuits in concluding that the terms used in the Springfield ordinance – "obstruct" and "resist"— covered only physical acts or fighting words and did not give officers unfettered discretion to make arrests for mere words that annoy them. *Id.* at 1194. The *McDermott* court also noted that in *State v. Krawsky,* 426 N.W.2d 875, 875–78 (Minn.1988), the Minnesota Supreme Court considered *City of Houston* in upholding a state statute against a First Amendment challenge, and that court found that the statute, which used the terms "obstructs," "hinders," "prevents," and "interferes," applied only to physical acts substantially frustrating or hindering an officer's performance of his duties. *McDermott*, 613 F.3d at 1194. The Eighth Circuit has cited *State v. Krawsky* favorably at least three times. *McDermott*, 613 F.3d at 1194; *Foster v. Metro. Airports Comm'n,* 914 F.2d 1076, 1079 & n. 4 (8th Cir.1990); and *Gorra v. Hanson,* 880 F.2d 95, 96–98 & n. 3 (8th Cir.1989)).

City of Houston is clearly distinguishable from the Ordinance in the present case, as the use of the term "interrupt," the key objectionable term in the Houston ordinance, is not used. One of the Ordinance's key words – "obstruct" – has been determined to be a word of "common understanding," not overbroad, only applying to physical acts substantially frustrating or hindering an officer's performance of her duties. *See, e.g., Cameron v. Johnson*, 390 U.S. 611, 615-616 (1968); *McDermott v. Royal,* 613 F.3d 1192, 1194 (8th Cir. 2010); St. Louis County

Ordinance 4866, §701.110. The Ordinance's other key word – "interfere" – has also been determined to be a word of "common understanding," not overbroad, only applying to physical acts substantially frustrating or hindering an officer's performance of her duties. *See, e.g., Cameron v. Johnson*, 390 U.S. 611, 615-616 (1968); *Cox v. State of Louisiana*, 379 U.S. 559, 562-563 (1965); *Lawrence v. 48th Dist. Court*, 560 F.3d 475 (6th Cir. 2009); *Martin v. City of Oklahoma City,*_ F. Supp. 3d _ , 2016 WL 1529927 (W.D. Okla. Apr. 14, 2016); St. Louis County Ordinance 4866, §701.110.

Plaintiffs erroneously cite *Copeland v. Locke*, 613 F.3d 875 (8th Cir. 2010) in support of the proposition that the "Eighth Circuit acknowledged section 701.110's constitutional infirmities by concluding in an as-applied challenge that the ordinance violated the First Amendment. Plaintiffs' Memorandum, p.8. *Copeland* was a de novo review of a summary judgment motion involving 42 U.S.C. §1983 allegations, not a review of the constitutionality of the Ordinance, and it was decided on the basis of an issue of fact, and not on the legal issue. In *Copeland*, the defendant officer was conducting a traffic stop, and was blocking plaintiff's driveway. In remanding the case to trial, the Eighth Circuit noted that Plaintiff's request for the officer to "move his car," using curse words, was expressive, and was not interference. *Id.* Plaintiff denied hearing the officer say 'step back,' thus a genuine dispute of material fact existed, and the case was remanded. *Id.* at 880. The constitutionality of the Ordinance was never addressed by the Eighth Circuit and the *Copeland* case has no bearing on the present matter.

For all the reasons set forth in this Order and Judgment, the Ordinance, §701.110, SLCRO 4866, entitled "Interfering with an Officer, Unlawful," is not unconstitutionally vague and is not unconstitutionally overbroad.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that:

(a) St. Louis County Ordinance 4866, §701.100, is declared not unconstitutionally vague;

(b) St. Louis County Ordinance 4866, §701.100, is declared not unconstitutionally overbroad;

(c) Plaintiffs' 'Complaint' for declaratory judgment and injunctive relief is denied and dismissed, with prejudice, consistent with this Order and Judgment;

(d) Defendant St. Louis County and Defendant County Counselor Peter J. Krane are granted judgment in their favor, consistent with this Order and Judgment; and

(e) The parties shall each bear their own costs in this matter.

SO ORDERED:

Gloria C. Reno

Hon. Gloria Clark Reno
Division 19
Twenty-First Judicial Circuit Court
St. Louis County, Missouri

Dated: Feb. 27, 2017

C: All parties of record or their counsel:

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